

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JEAN FAINBRUN

Plaintiff,

05 CV 4364 (DLI)

-against-

**NOTICE OF
MOTION**

SOUTHWEST CREDIT SYSTEMS, INC.

Defendant.

PLEASE TAKE NOTICE, that upon the appended memorandum of law with attached exhibits pursuant to Fed. R. Civ. P. 56, plaintiff will move before the Honorable Dora L. Irizarry, United States District Court, Eastern District of New York at 225 Cadman Plaza East, Brooklyn, New York on a date determined by the Court for an Order granting plaintiff's motion for summary judgment, and such other relief as this Honorable Court deems just and proper.

Dated: Woodmere, New York
November 1, 2006



Adam J. Fishbein, P.C. (AF-9508)
Attorney At Law
Attorney for the Plaintiff
735 Central Avenue
Woodmere, New York 11598
Telephone (516) 791-4400
Facsimile (516) 791-4411

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JEAN FAINBRUN,

Plaintiff,

vs.

SOUTHWEST CREDIT SYSTEMS, LP,

05 CV 4364 (DLI)

Defendant.

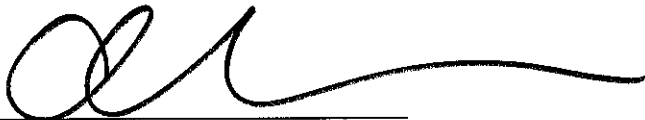
**PLAINTIFF'S RULE 56 STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE TO BE TRIED, IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 56.1, Plaintiff submits this Statement of Material Facts in support of his motion for summary judgment:

1. Plaintiff is a consumer as that term is defined by section 1692(a)(3) of the FDCPA.
2. Defendant is a debt collector, regularly engaged in the collection of debts owed by consumers, as that term is defined in section 1692(a)(06) of the FDCPA.
3. This action was brought pursuant to the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. §1692 et seq. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.
4. On a date prior to January of 2004, Defendant began attempting to collect a debt alleged to be owed by Plaintiff.

5. On or about January 13, 2004, Defendant sent Plaintiff an initial collection letter seeking to collect a consumer debt. See copy of the letter attached to the complaint.
6. Said letter states in part: "Our records indicate that this debt remains unpaid. This shall serve as notification that unless you contact this office immediately to establish payment arrangements for payment, we will be required to proceed with collection efforts on your account. We have previously informed you that Southwest Credit has the right to report information regarding your account to all major credit reporting agencies. Late payments, missed payments, or other defaults may be reflected on your credit report."
7. Defendant acknowledges that it does not report late payments or missed payments. Additionally, the only default that the defendant reports is the initial reporting of the account to the credit bureaus. Deposition of Jeff Hurt (Hurt Deposition), dated September 14, 2006, at pp. 6-10.
8. Defendant acknowledges it has sent approximately 20,000 letters similar to those sent to Plaintiff. Hurt Deposition at pp. 10-11.

Dated: Woodmere, New York
November 1, 2006



ADAM J. FISHBEIN, P.C. (AF- 9508)
Attorney for Plaintiff
Attorney at Law
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Woodmere, New York 11598
Telephone: (516) 791-4400
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JEAN FAINBRUN,

Plaintiff,

-against-

SOUTHWEST CREDIT SYSTEMS, LP,

05 CV 4364 (DLI)

Defendant.

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiff submits this brief in support of his Motion for Summary Judgment. Plaintiff alleges that Defendant violated §1692g based upon language contained in Defendant's correspondence. For the reasons set forth herein, Plaintiff's claim pursuant to the Fair Debt Collection Practices Act, §1692 et seq. (FDCPA) should be granted.

JURISDICTIONAL STATEMENT

This action was brought pursuant to the Fair Debt Collection Practices Act (FDCPA) 15 U.S.C. §1692 et seq. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56, summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex v. Catrett*,

477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party must demonstrate the absence of any material factual issue genuinely in dispute. *See id.* A material fact is one whose resolution would "affect the outcome of the suit under governing law," and a dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The court must view the inferences to be drawn from the facts in the light most favorable to the party opposing the motion. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). However, the non-moving party may not "rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment." *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 12 (2d Cir.1986). The party must produce specific facts sufficient to establish that there is genuine factual issue for trial. *Celotex*, 477 U.S. at 322-23, 106 S.Ct. 2548. On motions for summary judgment the court will not try issues of fact, but will determine only if there are issues to be tried. *See Donahue v. Windsor Locks Bd. Of Fire Commissioners*, 834 F.2d 54, 55 (2d Cir. 1987). The burden of showing the absence of any genuine dispute as to a material fact rests on the party seeking summary judgment. *McLee v. Chrysler Corp.*, 109 F.3d 130, 134 (2d Cir. 1997).

DISCUSSION

The FDCPA establishes a general prohibition against the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Moreover, a single violation of Section 1692e is sufficient to

establish civil liability under the FDCPA. *See Clomon v. Jackson*, 988 F.2d at 1318; 15 U.S.C. § 1692k (establishing civil liability for "any debt collector who fails to comply with any provision of this subchapter"); *See also Dutton v. Wolhar*, 809 F.Supp. 1130, 1141 (D.Del. 1992) ("least sophisticated debtor is not charged with gleaning the more subtle of the two interpretations" of a collection notice).

Plaintiff submits that the following language violates the FDCPA: "Our records indicate that this debt remains unpaid. This shall serve as notification that unless you contact this office immediately to establish payment arrangements for payment, we will be required to proceed with collection efforts on your account. We have previously informed you that Southwest Credit has the right to report information regarding your account to all major credit reporting agencies. Late payments, missed payments, or other defaults may be reflected on your credit report."

At the defendant's deposition, the deponent testified that the defendant does not report late payments or missed payments; and that the only default Defendant reports is the initial reporting of the account to the credit bureaus. Therefore, defendant has provided false credit information and engaged in deceptive practices in violation of 15 U.S.C. §§ 1692e(8) and 1692e(10).

There is no material dispute as to the contents of the letter from Defendant. The misrepresentation by Defendant that it reports "late payments, missed payments, or other defaults . . ." is completely deceptive; and such contradictory messages to consumers has been held to be a violation of the FDCPA. *See, e.g., Russell*, 74 F.3d at 33- 36; *Miller v.*

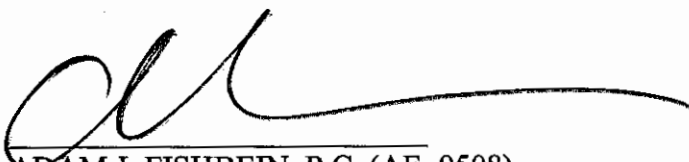
Payco-Gen. Am. Credits, Inc., 943 F.2d 482 (4th Cir.1991); *Swanson v. S. Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9th Cir.1991). Applying the least sophisticated consumer standard, it is clear that the Defendant's communications to Plaintiff contain contradictory or overshadowing language and, thus, mislead. The language of the debt collection letter here, standing alone, "make[s] the least sophisticated consumer uncertain as to her rights." See *Savino v. Computer Credit, Inc.*, 164 F.3d 81, 85 (2d Cir.1998); *Russell*, 74 F.3d at 35.

Accordingly, Defendant's letter violated the FDCPA as a matter of law and Plaintiff is entitled to judgment based thereon.

CONCLUSION

Plaintiff requests this court grant its Motion for Summary Judgment.

Dated: Woodmere, New York
November 1, 2006

A handwritten signature in black ink, appearing to read 'Adam J. Fishbein', with a long horizontal flourish extending to the right.

ADAM J. FISHBEIN, P.C. (AF- 9508)
Attorney for Plaintiff
Attorney at Law
735 Central Avenue
Woodmere, New York 11598
Telephone: (516) 791-4400
Facsimile: (516) 791-4411

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JEAN FAINBRUN on behalf of himself
and all others similarly situated

Plaintiff,

-against-

SOUTHWEST CREDIT SYSTEMS, L.P.

Defendant.

RECEIVED
U.S. DISTRICT COURT, E.D.N.Y.
IN CLERK'S OFFICE
LONG ISLAND COURTHOUSE

★ SEP 15 2005 ★
ENTERED

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CV 05 4364

IRIZARRY, J.

CLASS ACTION COMPLAINT

POHORELSKY, M.

Introduction

1. Plaintiff Jean Fainbrun seeks redress for the illegal practices of Southwest Credit Systems, L.P. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to T-Mobile.
4. Upon information and belief, defendant is a foreign corporation with its principal place of business is located in Plano, Texas.

5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

Allegations Particular to Jean Fainbrun

9. On information and belief, on a date better known by defendant, defendant began to attempt to collect an alleged consumer debt from the plaintiff.
10. On information and belief, on or about March 16, 2005 defendant sent the plaintiff a collection letter seeking to collect a balance allegedly incurred for personal purposes for cellular telephone service through T-Mobile.
11. Said letter states in pertinent part as follows: "Our records indicate that this debt remains unpaid. This shall serve as notification that unless you contact this office immediately to establish payment arrangements for payment, we will be required to proceed with collection efforts on your account. We have previously informed you that Southwest Credit has the right to report information regarding your account to all major

credit reporting agencies. Late payments, missed payments, or other defaults may be reflected on your credit report.”

12. The said letter is in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e(5), 1692e(8) and 1692e(10) for engaging in falsely threatening and deceptive practices and for stating false credit information.

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.

13. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-12 as if set forth fully in this cause of action.
14. This count is brought on behalf of plaintiff and the members of a class.
15. The Class consists of consumers who received the same form letter, as did the plaintiff.
16. The Class consists of all persons whom Defendant's records reflect resided in the State of New York or in the United States depending upon numerosity, and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about March 16, 2005 (b) the collection letter was sent to a consumer seeking payment of an alleged debt; and (c) the collection letter was not returned by the postal service as undelivered, (d) and that the letter contained violations of 15 U.S.C. §§ 1692e(5), 1692e(8) and 1692e(10).
17. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

- (A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.
 - (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the defendant violated the FDCPA.
 - (C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of defendant.
 - (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
 - (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.
18. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action.
19. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

20. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.
21. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

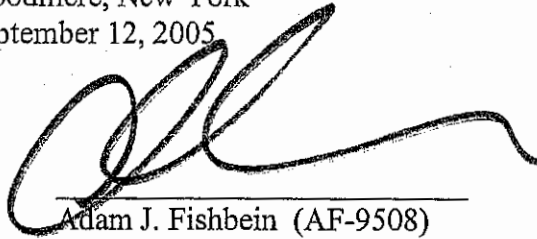
Violations of the Fair Debt Collection Practices Act

22. The defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
23. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Woodmere, New York
September 12, 2005



Adam J. Fishbein (AF-9508)

Attorney At Law

Attorney for the Plaintiff

735 Central Avenue

Woodmere, New York 11598

Telephone (516) 791-4400

Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable



Adam J. Fishbein (AF-9508)

Date: 03-16-05
Creditor: T MOBILE
Amt. Due: \$1,009.21
Acct. No.: 8437745 - 233063188
Telephone: (800) 462-3894

#BWNCPZ
#843774531928#
FAINBRUN JEAN
2328 E 66TH ST
BROOKLYN NY 11234-6326

|||||

Dear FAINBRUN JEAN,

Our records indicate that this debt remains unpaid. This shall serve as notification that unless you contact this office immediately to establish arrangements for payment, we will be required to proceed with collection efforts on your account. We have previously informed you that Southwest Credit has the right to report information regarding your account to all major credit reporting agencies. Late payments, missed payments, or other defaults may be reflected on your credit report.

Applicable state laws are printed on the back of this notice.

We want to help and are willing to work with you, but you must contact our office immediately. Avoid further collection activity by enclosing your payment with the tear-off coupon below, or by contacting us to make payment arrangements on your account. Full or partial payment can also be made through our website address at www.sw-credit.com.

Sincerely,
Southwest Credit Systems, L.P.

This is an attempt to collect a consumer debt by a debt collector.
Any information obtained will be used for that purpose.

*** PLEASE DETACH AND RETURN IN THE ENCLOSED ENVELOPE WITH YOUR PAYMENT ***



For your protection and better service please:

1. Do not send cash through the mail.
2. Return this portion of the statement with your payment.
3. Include account number on the check or money order.

Acct. No.: 8437745-233063188
Creditor: T MOBILE
#BWNCPZ
#843774531928#
FAINBRUN JEAN
2328 E 66TH ST
BROOKLYN NY 11234-6326

IF PAYING BY CREDIT CARD, FILL OUT BELOW

CARD NUMBER		EXP. DATE	CHECK CARD USING FOR PAYMENT	
SIGNATURE				
ACCOUNT #:	DATE:			
8437745-233063188	03-16-05			
PLEASE PAY THIS AMOUNT:		PAYMENT AMOUNT: \$		
\$1,009.21				

Southwest Credit Systems, L.P.
5910 W Plano Parkway
Suite 100
Plano, TX 75093-4638

|||||

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JEAN FAINBRUN, on behalf of himself
and all others similarly situated,

CV-05-4364

Plaintiff,

-against-

ANSWER

SOUTHWEST CREDIT SYSTEMS, L.P.,

(Irizarry, J.)
(Pohorelsky, M.J.)

Defendant.

-----X

Defendant, Southwest Credit Systems, L.P., by its attorney Arthur Sanders, answers plaintiff's complaint as follows:


1. Defendant denies knowledge or information sufficient to form a belief with respect to the truth of the allegation contained in Paragraph "1" of the complaint.
2. Defendant denies knowledge or information sufficient to form a belief with respect to the truth of the allegation contained in Paragraph "2" of the complaint.
3. Defendant denies knowledge or information sufficient to form a belief with respect to the truth of the allegation contained in Paragraph "3" of the complaint.
4. Defendant denies the allegation contained in Paragraph "4" of the complaint.

5. Defendant admits the allegations contained in Paragraph "5" of the complaint.
6. Defendant admits the allegations contained in Paragraph "6" of the complaint.
7. Defendant admits the allegation contained in Paragraph "7" of the complaint.
8. Defendant admits the allegation contained in Paragraph "8" of the complaint.
9. Defendant admits the allegations contained in Paragraph "9" of the complaint and all of its sub-paragraphs.
10. Defendant admits sending correspondence to the plaintiff but otherwise denies the allegation contained in Paragraph "10" of the complaint.
11. Defendant admits the allegation contained in Paragraph "11" of the complaint.
12. Defendant denies the allegation contained in Paragraph "12" of the complaint.
13. Defendant denies the allegation contained in Paragraph "13" of the complaint.
14. Defendant denies the allegation contained in Paragraph "14" of the complaint.
15. Defendant admits the allegation contained in Paragraph "15" of the complaint.

16. Defendant admits the allegation contained in Paragraph "16" of the complaint.
17. Defendant denies the allegation contained in Paragraph "17" of the complaint and all of its sub-paragraphs.
18. Defendant denies the allegation contained in Paragraph "18" of the complaint.
19. Defendant denies the allegation contained in Paragraph "19" of the complaint.
20. Defendant denies the allegation contained in Paragraph "20" of the complaint.
21. Defendant denies the allegation contained in Paragraph "21" of the complaint.
22. Defendant denies the allegation contained in Paragraph "22" of the complaint.
23. Defendant denies the allegation contained in Paragraph "23" of the complaint.

WHEREFORE, defendant, Southwest Credit Systems, L.P., requests Judgment dismissing the complaint with prejudice and denying all requested relief therein, together with such other and further relief as the Court deems just and proper, including costs and reasonable attorneys' fees.

Dated: Spring Valley, New York
October 18, 2005



ARTHUR SANDERS, ESQ. (AS-1210)
Attorney for defendant
2 Perlman Drive - Suite 301
Spring Valley NY 10977-5230
845-352-7272

TO:
Adam J. Fishbein, Esq.
Attorney for plaintiff
735 Central Avenue
Woodmere NY 11598

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JEAN FAINBRUN

Plaintiff,

05 CV 4364 (DLI)

-against-

SOUTHWEST CREDIT SYSTEMS, L.P.

Defendant.
-----X

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR ADMISSIONS, INTERROGATORIES, AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Plaintiff hereby requests that each defendant respond to the following requests for admissions, interrogatories and document requests.

Unless otherwise specified in a particular paragraph, the time period covered by this request is one year prior to the filing of the complaint to the present. If a paragraph asks for information irrespective of date, this limitation does not apply.

If you are declining to produce any document or respond to any paragraph in whole or in part because of a claim of privilege, please: (a) identify the subject matter, type (e.g., letter, memorandum), date, and author of the privileged communication or information, all persons that prepared or sent it, and all recipients or addressees; (b) identify each person to whom the contents of each such communication or item of information have heretofore been disclosed, orally or in writing; (c) state what privilege is claimed; and (d) state the basis upon which the privilege is claimed.

If any document requested was, but no longer is, in your possession or subject to your control, please state: (a) the date of its disposition; (b) the manner of its disposition (e.g., lost, destroyed, transferred to a third party); and (c) an explanation of the circumstances surrounding the disposition of the document.

If any paragraph of this request is believed to be ambiguous or unduly burdensome, please contact the undersigned and an effort will be made to remedy the problem.

REQUESTS FOR ADMISSIONS

1. Plaintiff resides in this District.
2. Defendant is a debt collector.
3. Defendant has sent more than 25 letters in the same form with the same standard language.
4. Defendant has sent more than 100 letters in the same form with the same standard language.
5. Defendant has sent more than 500 letters in the same form with the same standard language.
6. Since the sending of the letter at issue in the complaint, defendant did not report the account to any credit reporting agency.
7. Defendant does not report late payments to the credit reporting agencies.
8. Defendant does not report missed payments to the credit reporting agency.
9. Defendant did not proceed with collection efforts on the plaintiff's account subsequent to the March 16, 2005 letter sent to the plaintiff.

INTERROGATORIES

1. State the name, address, title and job description of each office, director, partner, shareholder and employee of each defendant who authorized, approved, or was aware of the collection letters at issue.
2. Describe in detail the financial and business relationship(s) among

defendant and the creditor. Include in your answer the billing method, rate, frequency and media; expenses billed; funds remittance method, rate, frequency and media; the nature and extent of services rendered (e.g., letter only, letter followed by suit in what circumstances); fee arrangement for each identified type of service; any salary or retainer.

3. Describe, step-by-step, the process which resulted in the collection letters at issue being transmitted to plaintiff, beginning with the date and method of transmission of debtor information to the person that sent it, e.g., computer tapes or other media delivered (when, by whom, where and to whom); content of computer tape or media; data input (where and by whom); computer entry or other means of directing transmission letters (where and by whom entry made), letter with debtor information printed (from where and by whom); letter with debtor information mailed (from where and by whom), computer tapes or media returned (on what occasion, when, by whom and to whom).

4. State by year the number of persons who (a) were from one year prior to the filing of the complaint, form letters prepared using the same form as the collection letters at issue allegedly owed money in connection non-business debts. Identify each such person.

5. State the net worth of the defendant and explain how it was calculated. Identify each asset and debit worth more than \$5000.

6. Identify all partners, officers, directors, and shareholders of the defendant and state the offices and proportion of equity held by each.

7. If your response to any of the requests for admissions is anything other than an unqualified admission, please explain the basis for your denial.

8. With respect to each expert whom you will or may call upon to give evidence in connection with this case, please state: (a) his name, address, telephone number, occupation, and current employment; (b) the subject matter of his expertise; (c) his educational background, academic degrees, employment history, employment experience, and any other matters which you contend qualify him as an expert; (d) the

substance of all facts and opinions to which he could testify if called as a witness; (e) a summary of the grounds for each such opinion.

10. Set forth the collection steps defendant undertakes for the underlying creditor at issue including a breakdown if the defendant engages in different collection steps depending upon the size of the debt.

11. How many class members are there as referenced in the class definition in the complaint.

12. At the time of the sending of the March 16, 2005 collection letter to the plaintiff, was the defendant licensed with the New York City Department of Consumer Affairs.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Please produce:

1. All documents which discuss, describe or set forth standards, criteria, guidelines, policies or practices relating to compliance with the Fair Debt Collection Practices Act, or state statute regulating debt collectors.

2. All documents relating to any complaint, criticism or inquiry, by any person, concerning defendants' compliance with the Fair Debt Collection Practices Act, or state statutes regulating debt collection activities, or collection practices generally.

3. One copy of each different form letter defendant sent to debtors and specifically a copy of the form of the first collection letter sent to the plaintiff..

4. All manuals, policy statements, guidelines and instructional materials furnished to employees that relate to the conduct of collection activities by either defendant.

5. All documents relating to the maintenance by defendant of procedures adapted to avoid any violation of the Fair Debt Collection Practices Act.

6. Defendant's annual financial statements, annual reports, semiannual and

quarterly financial statements and tax returns for the last three years.

7. All documents relating to any judicial or administrative proceeding (irrespective of date) in which defendants were accused of violating the Fair Debt Collection Practices Act, any state statute regulating collection practices, or of committing a tort while engaging in collection activities.

8. All documents (irrespective of date) relating to any claim made against defendants for violating the Fair Debt Collection Practices Act, any state statute regulating collection practices, or of committing a tort while engaging in collection activities.

9. All insurance policies that may afford coverage with respect to the matters complained of.

10. The agreement(s) pursuant to which defendant sought to collect money from plaintiff.

11. All documents (irrespective of date) which constitute or reflect communications between defendants and any Attorney General's office or other law enforcement, consumer protection or regulatory agency, relating to collection activities of defendants.

12. All documents (irrespective of date) which constitute or reflect communications between defendants and private agencies that receive consumer complaints (such as a Better Business Bureau or newspaper column), relating to collection activities of defendant.

13. All documents (irrespective of date) that discuss defendants' compliance or lack of compliance with the Fair Debt Collection Practices Act.

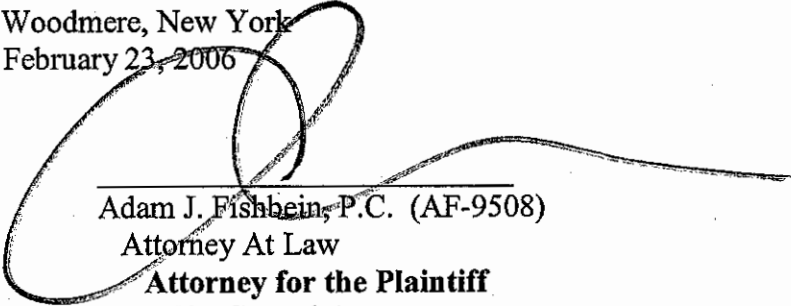
14. All documents transmitted to plaintiff by defendant with respect to the alleged debt of plaintiff.

15. All documents relating to plaintiff, or which are indexed, filed or retrievable under his name or any number, symbol, designation or code (such as an

account number or Social Security number) assigned to him or his transaction.

16. An organizational chart for the defendant.
17. Produce liability policies, coverage, type, policy number(s) of each liability insurance company.
18. Produce each claim made under each liability insurance policy in the last two years, including the date of claim, claim number, the subject of the claim, the status of the claim, the resolution of the claim, and any amounts paid under each policy.
19. Produce any notices that you have given any insurer regarding plaintiff's claims.
20. Produce the terms of the agreement pursuant to which the defendant sought money from the plaintiff.

Dated: Woodmere, New York
February 23, 2006

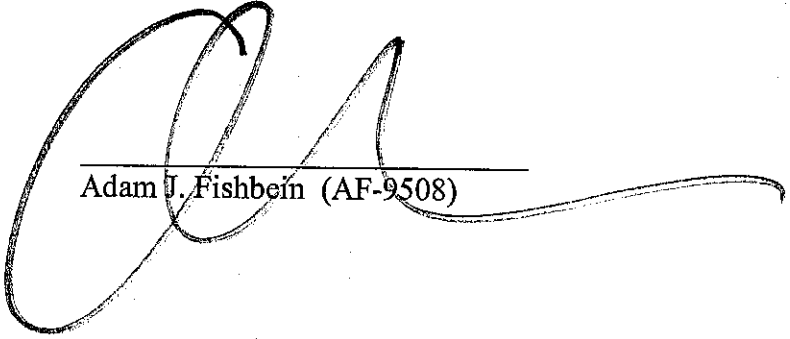


Adam J. Fishbein, P.C. (AF-9508)
Attorney At Law
Attorney for the Plaintiff
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Telephone (516) 791-4400
Facsimile (516) 791-4411

CERTIFICATE OF SERVICE

I, Adam J. Fishbein, hereby certify that on February 23, 2006 I served the within discovery requests upon the defendant as reflected below via facsimile:

Arthur Sanders, Esq. (via facsimile to 845-352-8131)



Adam J. Fishbein (AF-9508)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

JEAN FAINBRUN,

05 CV 4364 (DLI)

Plaintiff,

- against -

SOUTHWEST CREDIT SYSTEMS, L.P.

Defendant.

- - - - -X

DEFENDANT'S RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR ADMISSIONS

Defendant, Southwest Credit Systems, L.P., by its attorney, Arthur Sanders, responds to plaintiff's first request for admissions as follows:

1. Defendant has insufficient information to admit or deny.
2. Admits.
3. Admits.
4. Admits.
5. Admits.
6. Denies.
7. Denies.
8. Denies.
9. Denies.

Dated: Spring Valley, New York
May 30, 2006



ARTHUR SANDERS, ESQ. (AS-1210)
Attorney for defendant
2 Perlman Drive - Suite 301
Spring Valley NY 10977-5230
845-352-7272

TO: Adam J. Fishbein (AF-9508)
Attorney for plaintiff
735 Central Avenue
Woodmere NY 11598

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

JEAN FAINBRUN,

05 CV 4364 (DLI)

Plaintiff,

- against -

SOUTHWEST CREDIT SYSTEMS, L.P.,

Defendant.

- - - - -X

DEFENDANT'S RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR INTERROGATORIES

Defendant, Southwest Credit Systems, L.P., by its attorney, Arthur Sanders, responds to plaintiff's first request for interrogatories as follows:

1. State the name, address, title and job description of each office, director, partner, shareholder and employee of each defendant who authorized, approved, or was aware of the collection letters at issue.

RESPONSE: Jeff Hurt, CEO of defendant, authorizes and approves all letters. All of defendant's employees are aware of the collection letters used by the defenda.

2. Describe in detail the financial and business relationship(s) among defendant and the creditor. Include in your answer the billing method, rate, frequency and media; expenses billed; funds remittance method, rate, frequency and media; the nature and extent of services rendered (e.g., letter only, letter followed by suit in what circumstances); fee arrangement for each identified type of service; any salary or retainer.

RESPONSE: Defendant is a third-party debt collector. It handled plaintiff's account along with thousands of other accounts on a contingency fee basis. Defendant sends letters and attempts phone calls in order to collect the amount due. It also reports to the credit bureaus.

3. Describe, step-by-step, the process which resulted in the collection letters at issue being transmitted to plaintiff, beginning with the date and method of transmission of debtor information to the person that sent it, e.g., computer tapes or other media delivered (when, by whom, where and to whom); content of computer tape or media; data input (where and by whom); computer entry or other means of directing transmission letters (where and by whom entry made), letter with debtor information printed (from where and by whom); letter with debtor information mailed (from where and by whom), computer tapes or media returned (on what occasion, when, by whom and to whom).

RESPONSE: Defendant receives an electronic spreadsheet and loads the information provided to it by its creditor client into its computer system. A demand letter is immediately generated. Further action is contingent upon the response received from the debtor, as well as the amount of the claim and the identity of the creditor.

4. State by year the number of persons who (a) were from one year prior to the filing of the complaint, form letters prepared using the same form as the collection letters at issue allegedly owed money in connection non-business debts. Identify each such person.

RESPONSE: Twenty thousand (20,000) people receive the same form letter between September 14, 2004 and September 14, 2005.

5. State the net worth of the defendant and explain how it was calculated. Identify each asset and debit worth more than \$5,000.00.

RESPONSE: Defendant objects to this interrogatory request as the answer is not calculated to lead to the production of any admissible evidence.

6. Identify all partners, officers, directors, and shareholders of the defendant and state the offices and proportion of equity held by each.

RESPONSE: Officers are as follows:

- a) Jeff Hurt, CEO, Secretary, Treasurer, Director;
- b) Keith Jones, President, Assistant Secretary, Director;
- c) Joe Longbotham, Vice-President, Assistant Secretary, Director.

7. If your response to any of the requests for admissions is anything other than an unqualified admission, please explain the basis for your denial.

RESPONSE: Defendant did report plaintiff's account to a credit reporting agency and did proceed with collection efforts.

8. With respect to each expert whom you will or may call upon to give evidence in connection with this case, please state: (a) his name, address, telephone number, occupation, and current employment; (b) the subject matter of his expertise; (c) his educational background, academic degrees, employment history, employment experience, and any other matters which you contend qualify him as an expert; (d) the substance of all facts and opinions to which he could testify if called as a witness; (e) a summary of the grounds for each such opinion.

RESPONSE: Not applicable.

9. There is no interrogatory number "9".

10. Set forth the collection steps defendant undertakes for the underlying creditor at issue including a breakdown if the defendant engages in different collection steps depending upon the size of the debt.

RESPONSE: See defendant's responses to Interrogatories "2" and "3".

11. How many class members are there as referenced in the class definition in the complaint.

RESPONSE: There are no class members referenced in the complaint. As was previously indicated, 20,000 letters were sent in the same form as the exhibit attached to the complaint.

12. At the time of the sending of the March 16, 2005 collection letter to the plaintiff, was the defendant licensed with the New York City Department of Consumer Affairs.

RESPONSE: Yes, defendant was licensed with the New York City Department of Consumer Affairs.

Dated: Spring Valley, New York
May 30, 2006



ARTHUR SANDERS, ESQ. (AS-1210)
Attorney for defendant
2 Perlman Drive - Suite 301
Spring Valley NY 10977-5230
845-352-7272

TO: Adam J. Fishbein (AF-9508)
Attorney for plaintiff
735 Central Avenue
Woodmere NY 11598

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 - - - - -x
5 JEAN FAINBRUN,

6 Plaintiff,

7 -against-

8 SOUTHWEST CREDIT SYSTEMS, LP,

9 Defendant.

10 - - - - -x
11 735 Central Avenue

12 Woodmere, New York

13 September 14, 2006

14 4:30 p.m.

15
16 DEPOSITION of JEFF HURT, a witness on
17 behalf of SOUTHWEST CREDIT SYSTEMS, LP, the
18 Defendant herein, held at the above time and
19 place, taken before Karen Zammit, a Shorthand
20 Reporter and Notary Public of the State of New
21 York, pursuant to Rule 26 et seq. of the Federal
22 Rules of Civil Procedure and stipulations between
23 Counsel.
24

25 * * *

1
2 APPEARANCES:
3

4 ALAN J. FISHBEIN, P.C.

5 Attorney for Plaintiff

6 735 Central Avenue

7 Woodmere, New York 11598

8 ARTHUR SANDERS, ESQ.

9 Attorney for Defendant

10 2 Perlman Drive

11 Spring Valley, New York 10977

12 * * *

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

IT IS FURTHER STIPULATED AND AGREED that counsel shall furnish counsel for the witness with a copy of the within deposition without charge.

* * *

J E F F H U R T, the witness herein, having first been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. FISHBEIN:

Q What is your name?

A Jeff Hurt.

Q What is your business address?

A 59-10 West Plano Parkway, Plano, Texas 75093.

Q Mr. Hurt, have you ever had your deposition taken before?

A Yes.

Q I guess you are familiar with the procedure then?

A Yes.

Q Have you had your deposition taken before as a representative of Southwest Credit Systems?

A No.

Q Would you happen to know, has Southwest Credit Systems been sued other than my action, has Southwest Credit Systems been sued under the Fair Debt Collection Practices Act?

A Yes.

J. Hurt

Q Have any of those matters been resolved?

A Yes.

Q Can you tell me how many times it was sued?

A Over what period of time?

Q Let's say in the last two years.

A I would have to look at my records, but I would estimate ten to 15.

Q Was there ever a finding of liability by a judge against Southwest Credit Systems?

A No.

Q You have stated in the Responses to Interrogatories and Responses to Requests for Admissions that the defendant does report to the credit bureaus; is that correct?

A Yes.

Q Which ones does it report to?

A The three major ones.

Q Do you have agreements with those credit reporting agencies?

A Could you expand the question.

Q Some type of written agreement as

J. Hurt

to what they'll do for you and what you will do
-- what your responsibilities are and what their
responsibilities are under a contract?

A I don't have personal knowledge of
that.

Q Are you aware of if those
agreements do exist?

A I don't have personal knowledge of
that.

Q What information do you report to
the credit bureaus concerning a debt that is
being collected by Southwest Credit Systems?

A Are you talking in general, as a
general proposition?

Q I guess for now we can limit it to
T-Mobil.

A Okay. What was the question?

Q What information do you report to
the crest bureau concerning T-Mobil accounts?

A I don't have that information in
front of me, but we report the balance, the debt,
the status, we report monthly.

Q What do you mean by reporting the
status?

1 J. Hurt

2 A The status of the account, for
3 example, disputed or open collections, paid.

4 Q Any accounts that you have from
5 T-Mobil, do you ever enter into any payment
6 arrangements with the debtors?

7 A Yes.

8 Q Meaning where, just to clarify,
9 that a debtor will pay the balance or a portion
10 of the balance as a settlement over time?

11 A Yes.

12 Q If you enter into a payment or a
13 settlement agreement where the debt is paid over
14 time is that reflected on the credit reports?

15 A Yes.

16 Q How is that reflected?

17 A We report the status, the balance
18 and the date.

19 Q The date of what?

20 A The date we report what the balance
21 is.

22 Q On a particular date you report
23 what the balance is; is that correct?

24 A Yes.

25 Q Do you report that the matter has

1 J. Hurt

2 been settled on a payment plan or you just update
3 the report as the balance gets lower and lower?

4 A We update the current balance at
5 the time of reporting.

6 Q If a debtor breaches the settlement
7 agreement is that somehow reflected on the
8 report?

9 A We continue to show collections.

10 Q Let say if a debtor is late on a
11 payment will the credit report reflect that the
12 debtor was late on a payment?

13 A No, we don't have the ability. We
14 are not the original creditor.

15 Q That would be the same for missed
16 payments, they would also not be reported?

17 A Yes.

18 Q Just referring your attention, I am
19 sure you know the text of the collection letter
20 as the interrogatory number one states that you
21 authorize and approve the letters, the last
22 sentence of the first paragraph of the collection
23 letter states, "late payments, missed payments,
24 or other defaults may be reflected on your credit
25 report."

1 J. Hurt

2 What does it mean by other defaults
3 may be reflected on your credit report?

4 A Failure to pay.

5 Q Failure to pay would be considered
6 a default that may be reflected on the credit
7 report. Failure to pay, is that considered the
8 initial reporting of the debt that the consumer
9 has failed to pay the debt and therefore that's
10 why it is on the report?

11 A Yes.

12 Q That would be the only circumstance
13 of reporting a default on the credit report?

14 A I am not sure I understand the
15 question.

16 MR. SANDERS: Could you perhaps
17 rephrase it. I am not understanding what
18 you are asking the witness.

19 MR. FISHBEIN: Okay. Please read
20 back the question.

21 [Whereupon, the requested portion
22 of the record was hereby read by the
23 reporter.]

24 Q Is failure to pay the only default
25 that may be reflected on the credit report?

1 J. Hurt

2 A Yes.

3 Q That failure to pay, is that
4 failure to pay equivalent to the initial
5 reporting of the debt by your company to the
6 credit bureaus?

7 A Please repeat that.

8 Q After the debt is initially
9 reported to the credit bureaus is there some type
10 of indication of failure to pay that is reported
11 to the credit bureaus after it is initially
12 reported to the credit bureaus?

13 A Yes.

14 Q What would that be?

15 A We update the bureau and it updates
16 the balance. If there was a change in balance it
17 would be reflected on the new update. For this
18 particular client there was not a payment made,
19 so I am not sure where we are going.

20 Q Does Southwest Credit Systems keep
21 financial records concerning what its net worth
22 is?

23 A Yes.

24 Q In your Response to Interrogatories
25 number four you stated in the relevant class

J. Hurt

period that 20,000 people receive the same form letter. Are you able to produce those names and addresses?

A I would have to research that.

MR. FISHBEIN: Okay.

I have no further questions. Thank you very much.

[Whereupon, the examination of the witness was concluded at 4:40 p.m.]

JEFF HURT

Subscribed and sworn to
before me this ____ day
of _____, 2006.

Notary Public

CERTIFICATION

STATE OF NEW YORK)

: SS.:

COUNTY OF NASSAU)

I, KAREN ZAMMIT, a Notary Public for and within the State of New York, do hereby certify:

That the witness(es) whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of September, 2006.



KAREN ZAMMIT

* * *

<p>A</p> <p>ability 8:13 able 11:3 account 7:2 accounts 6:20 7:4 Act 4:24 action 4:23 12:13 address 4:8 addresses 11:4 Admissions 5:17 agencies 5:23 AGREED 3:3,8,12 3:16 agreement 5:25 7:13 8:7 agreements 5:22 6:8 ALAN 2:3 APPEARANCES 2:2 approve 8:21 arrangements 7:6 ARTHUR 2:7 asking 9:18 attention 8:18 Attorney 2:4,7 authorize 8:21 Avenue 1:11 2:4 aware 6:7</p>	<p>12:2 certify 12:7,12 change 10:16 13:4,4 charge 3:19 circumstance 9:12 Civil 1:22 clarify 7:8 class 10:25 client 10:18 collected 6:13 collection 4:24 8:19 8:22 collections 7:3 8:9 company 10:5 concerning 6:12,20 10:21 concluded 11:10 considered 9:5,7 consumer 9:8 continue 8:9 contract 6:4 copy 3:18 correct 5:18 7:23 counsel 1:23 3:4,17 3:17 COUNTY 12:4 Court 1:2 3:15 credit 1:8,17 4:18,22 4:23 5:12,18,23 6:12,13 7:14 8:11 8:24 9:3,6,13,25 10:6,9,11,12,20 creditor 8:14 crest 6:20 current 8:4</p>	<p>default 9:6,13,24 defaults 8:24 9:2 defendant 1:9,18 2:7 5:17 deposition 1:16 3:6 3:13,18 4:12,17 disputed 7:3 DISTRICT 1:2,3 Drive 2:8 duly 4:3 12:9</p>	<p>form 3:9 11:2 forth 12:9 four 10:25 front 6:22 furnish 3:17 further 3:8,12,16 11:7 12:12</p>
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